IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Civil Writ Petition No. 995 of 2002 (S/B)

Bharat Singh …….. Petitioner

Versus

Additional Direction,
Agriculture & Soil Conservation,
Uttaranchal, Pauri Garhwal & others ……Respondents

Date of decision: 11th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

Whether the order/judgment should be sent to the reporters for reporting ?

Whether the reporters be allowed to see the judgment ?

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

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Bharat Singh …….. Petitioner

Versus

Additional Director,
Agriculture & Soil Conservation,
Uttaranchal, Pauri Garhwal & others …….Respondents

Mr. Rajendra Dobhal, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble P.C. Pant, J.

This writ petition has been moved under Article 226 of the Constitution of India for mandamus directing the respondents to permit the petitioner to continue of Class IV post in their department,

2) Brief facts of the case as alleged in the petition are that on 13.10.1995 the petitioner was appointed as Duplicating Machine Operator in the Office of respondent No. 2 in the pay sale of Rs. 750-940 per month on temporary basis for three months. Thereafter the services of the petitioner was extended from time to time till 31.05.1996. On 01.08.1996 petitioner was appointed on Class IV post on fixed salary of Rs. 910/- per month for three months. Said services of petitioner were again extended almost every time for three months with different consolidated salaries with small breaks up to 21.08.2001, whereafter his services were terminated. The termination of the petitioner is alleged to be illegal after six years of satisfactory work. The post of peon still lying vacant in the office of respondent No. 2. The petitioner is going through financial hardship and mental agony as meanwhile he had got married

and has a child. Challenging the termination from service this petition is filed.

3) On behalf of respondents Nos. 1 to 3 a joint counter affidavits has been filed in which alleged ad-hoc appointment for fixed period on consolidated salary and extension form time to time of the petitioner with small breaks is admitted. But it is denied if the petitioner was entitled to regularization as the appointment in the department was not substantive. It is further stated in the counter affidavit that 22.08.2001 petitioner's services could not be extended as there was no sufficient work and also that as against 546 sanctioned posts, 551 Class IV employees were working as such there was no question of regularization. Moreover, due to reorganization after creation of the new State of Uttaranchal there was possibility of further reduction of posts.

4) I heard learned counsel for the parties and gone through the affidavits of parties and papers annexed thereto.

5) The short question for consideration before this Court is whether petitioner has any right to continue in service in the circumstances of the case if so is he illegally deprived of the same.

6) Admittedly, the petitioner was initially appointed on 13.10.1995 for three month as Duplicating Machine Operator in pay scale of Rs. 759-940 (Copy of order Annexure-I to the petition) thereafter extended for further three month vide order dated 16.01.1996 (copy Annexure-II to the petition), again extended with effect from 15.04.1996 to 31.05.1996 by means of order dated 15.04.1996 (copy Annexure-III to the petition). After 31.05.1996 there appears a break and on 01.08.1996 admittedly the petitioner was appointed as Class IV employee on fixed period of three months on consolidated salary of Rs. 910/- per month which was alleged to have extended on 01.11.1996 for further three months but this time on

consolidated salary of Rs. 858/- per month only. Thereafter, on 05.05.1997, 02.08.1997, 16.09.1997, 19.12.1997, 30.03.1998, 26.06.1998, 28.09.1998, 28.12.1998, 27.03.1999, 02.07.1999, 30.09.1999, 21.12.1999, 06.04.2000, 25.07.2000, 04.11.2000 and 25.05.2001 the petitioner was appointed by different orders on Class IV post at fixed salary of Rs. 1,223/- per month. As such the appointment of petitioner was never a regular one but every time for fixed period and on consolidated salary.

7) Mr. Rajendra Dobhal, learned counsel for the petitioner argued that there are vacancies in Class IV in the respondent's office, still the petitioner is not being appointed on regular basis for last six years and he cannot be exploited and thrown away from service in this manner. In reply to this learned Standing Counsel for the respondents has stated that after reorganization of the department total number of Class IV posts in the Agriculture department are only 546 as against said sanctioned 546 posts already 551 employees are working as such there is no room to accommodate the petitioner in the department. Learned counsel for the petitioner drew my attention to the second page of the chart annexed to the Annexure- I to the rejoinder affidavit and submissions were made to convince this Court that there are 564 vacancies against which only 552 Class IV employees are working. I have perused this chart. It relates to the date 30.11.2000 while the last para of first page of this Annexure itself corroborates the respondent's case that in the month of August 2002 there were only 546 sanctioned posts against which 551 were already working. the last but one para of this page further makes clear the petitioner's services could not be extended beyond 22.08.2001 as number of sanctioned post not are likely to decrease. This makes clear before this Court that there is no sanctioned post existing for the petitioner after his termination on 22.08.2001 for the department.

8) In view of principle of law laid down in Director of Institute of Management V. Smt. Pushpa Srivastava reported in A.I.R. 1992 S.C. 2070, the Court cannot issue mandamus to the respondents for continuance of services of the petitioner merely on humanitarian ground. For the issuance of a writ under Article 226 of the Constitution of India, petitioner must show a case either of the infringement of fundamental right or some other legal right. Though this Court has sympathy with the petitioner but since there is no legal right violated by the respondents as such this Court is unable to grant any relief in the matter. The writ petition is accordingly dismissed. No order as to costs.

(P. C. Pant, J.)

Dt. 11th August 2004.
H. Negi